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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,612	02/19/2002	Brian Duda	1057P31US	9570
26131	7590	11/16/2004	EXAMINER	
NORMAN M. CAMERON SUITE 1401 - 1166 ALBERNI STREET VANCOUVER, BC V6E 3Z3 CANADA			RIVELL, JOHN A	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/076,612

**Applicant(s)**

DUDRA ET AL.

**Examiner**

John Rivell

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/27/04 (election, Draws).
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 and 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7, 8, 12, 13, 22, 23, 27 and 28 is/are rejected.
- 7) ☒ Claim(s) 9-11, 14, 15, 24-26, 29 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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Applicant's election without traverse of the invention of Group II, claims 7-15 and 22-30 in the reply filed on July 27, 2004 is acknowledged.

Claims 1-6 and 16-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 27, 2004.

In view of the papers filed July 27, 2004, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(b). The inventorship of this application has been changed by the deletion of Mr. Eric B. Fetchko.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 8, 22 and 23 are rejected under 35 U.S.C. §102 (b) as being anticipated by Jeavons.

The patent to Jeavons discloses "a hydraulic fluid reservoir (generally at 1) comprising a container with a top, a bottom, side walls (at 2, 5), a main interior chamber

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(within tank 1) and a smaller chamber (defined by tube 11) adjacent to one of the side walls having a top and a bottom and separated from the main interior chamber from the top of the smaller chamber to near the bottom thereof, a bottom opening (at neck 15) near the bottom of the smaller chamber communicating with the main interior chamber, whereby hydraulic fluid enters the smaller chamber through the opening up to the level of hydraulic fluid in the main interior chamber, but bubbles in the hydraulic fluid within the main interior chamber are isolated from the smaller chamber" as recited

Regarding claim 8, in Jeavons, "the top of the chamber (within tube 11) is adjacent to the top of the container (1), the chamber having a top opening (at neck 14) at the top thereof" as recited.

Regarding claim 22, the tank of Jeavons feed an oil burner which inherently includes "a pump". All other claim language being equal, Jeavons is considered to disclose "a combination pump and hydraulic reservoir" as claimed.

Regarding claim 23, see claim 8 above.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeavons in view of Noeth.

The patent to Jeavons discloses all the claimed features with the exception of having the smaller chamber within and partially formed by a wall of the larger container.

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The patent to Noeth discloses that it is known in the art to employ in a larger container 5, a separate smaller chamber defined within baffle plate 8 containing a level gauge at float 9, the smaller container located within the larger container and partially formed by the right side wall of the larger container for the purpose of ease of assembly by employing a common wall among two different fluid chambers.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Jeavons, the concept of locating the smaller chamber containing the level gauge within the larger container for the purpose of ease of assembly by employing a common wall among the two chambers as recognized by Noeth.

Claims 13 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeavons in view of Brown et al.

The patent to Jeavons discloses all the claimed features with the exception of having a "photodetector" to indicate liquid level.

The patent to Brown et al. discloses that it is known in the art to employ photodetectors 122, 126 detecting liquid level in the tank system for the purpose of non invasive level detection and to provide for remote electrical indication of the sensed level.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Jeavons a "photodetector" in place of the visual float indicator used therein for the purpose of providing non invasive level detection of the fluid level therein and to provide for remote electrical indication of the sensed level as recognized by Brown et al.

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Claims 9-11, 14, 15, 24-26, 29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (703) 308-2599. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John Rivell  
Primary Examiner  
Art Unit 3753

j.r.